

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SINGULAR COMPUTING LLC,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Civil Action No. 1:19-cv-12551-FDS

Hon. F. Dennis Saylor IV

ORAL ARGUMENT REQUESTED

**PLAINTIFF'S MOTION IN LIMINE NO. 5**  
**RE: GOOGLE PATENTS**

Matthew D. Vella (BBO #660171)  
Adam R. Doherty (BBO #669499)  
Kevin Gannon (BBO #640931)  
Brian Seeve (BBO #670455)  
Daniel McGonagle (BBO #690084)  
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ATTORNEYS FOR THE PLAINTIFF

Plaintiff, Singular Computing LLC (“Singular”), respectfully submits this motion *in limine* pursuant to Fed. Rs. Evid. 401/403/702 to preclude defendant, Google LLC (“Google”), from presenting evidence and/or argument at trial regarding its own patents. For the reasons set forth below, Singular requests that the motion be granted.

### **ARGUMENT**

On its Exhibit List, Google has identified the following of its own patents:

| EX. NO. | PATENT NO. | FILING DATE             | ISSUE DATE    |
|---------|------------|-------------------------|---------------|
| DTX1308 | 10,261,786 | Mar. 9, 2017            | Apr. 16, 2019 |
| DTX1309 | 10,621,269 | May 17, 2017<br>(Prov.) | Apr. 14, 2020 |
| DTX1310 | 10,698,976 | May 17, 2017<br>(Prov.) | Jun. 30, 2020 |
| DTX1311 | 9,710,748  | May 21, 2015<br>(Prov.) | Jul 18, 2017  |
| DTX1523 | 11,275,992 | May 17, 2017<br>(Prov.) | Mar. 15, 2022 |

Google should not be permitted to introduce testimony or other evidence or argument regarding these patents. First, none of these patents is prior art to the patents-in-suit. The ’273 patent issued on March 26, 2013. The ’156 patent was filed on March 25, 2013 and issued on December 22, 2015. Thus, the above-listed Google patents are not relevant to the validity of the ’273 patent and/or the ’156 patent and would only mislead and confuse the jury.

Second, “it is well-established that the existence of one’s own patent does not constitute a defense to infringement of someone else’s patent.” *Vaupel Textilmaschinen KG v. Meccanica Euro Italia S.P.A.*, 944 F.2d 870, 879 n. 4 (Fed. Cir. 1991). Thus, Google should not be permitted to offer testimony or other evidence or argument that the existence of its own patents is evidence of non-infringement.

Third, Google's damages expert (Ms. Stamm) does not rely on any of these Google patents in her expert report. Consequently, she cannot rely on them in support of her opinion on damages in this case. *See* Fed. R. Civ. P. 37(c)(1).

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), Singular requests the Court to entertain oral argument on this motion, as Singular believes such will assist the Court in resolving the motion.

Dated: December 5, 2023

Respectfully submitted,

*/s/ Kevin Gannon*

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**LOCAL RULE 7.1 CERTIFICATION**

I, Kevin Gannon, counsel for Singular Computing LLC, hereby certify that I conferred with counsel for Google LLC to resolve the issues presented in this motion but, after a good faith attempt to reach agreement, the parties were unable to do so.

*/s/ Kevin Gannon*

**CERTIFICATE OF SERVICE**

I certify that, on December 5, 2023, all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system.

*/s/ Kevin Gannon*